

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR
ORDER

S.B. Civil Writ Petition No.6195/1998

Ramesh Chandra Adhikari
Versus
State of Rajasthan and Others

Date of Order :: 29th November, 2013

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr. Ram Rakh Sharma, for the petitioner.

Mr. Krishn Verma, for the respondents.

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BY THE COURT:

The present writ application is directed against the order dated 28th of February, 1979 passed by the Project Officer, East Pakistan Displaced Camp, Baran; terminating his services on account of closure of the Camp since the Government of India decided not to extend the operation of the Camp any further.

The material facts essential for adjudication of the controversy are that the petitioner was appointed vide order dated 27th of May, 1971 purely on *ad hoc* and *temporary* basis, as a Ward Boy in the pay scale of Rs.75-140 from the date of joining to 29th of February, 1972 or until the closure of the Camp; as is evident from the appointment order issued from the office of the Commandant, East Pakistan Displaced Camp, Devli. The services of the petitioner were extended from time to time. On 28th of February, 1979, the Project Officer, East Pakistan Displaced Camp, Baran, terminated the services of the petitioner in view of the fact that the appointment of the petitioner was purely on *ad hoc* and *temporary* basis. Moreover, for the purpose of rehabilitation, the petitioner was allotted agricultural land/loan.

Further, since the displaced persons were rehabilitated including, the petitioner, and the Displaced Camps were closed, as decided by the Government of India. Thus, his services were no more required and were terminated w.e.f. 1st of April, 1979.

The learned counsel for the petitioner explaining the delay in approaching this Court in the year 1998 while challenging the termination order, which dates back to February, 1979; argued that the petitioner has been pursuing the remedy before the Civil Court and thereafter, before the Rajasthan Civil Services Appellate Tribunal.

The learned counsel for the petitioner pleaded that for non-compliance of mandate of Article 311 of the Constitution of India as well as on account of discrimination, for the reason that identically engaged/appointed persons, one of them, Shri Ranjeet Chandra was continued in service; the impugned order is bad in the eye of law and cannot be justified.

Per contra, the learned counsel for the respondent-state argued that the writ application is liable to be dismissed on the ground of delay and laches as the petitioner approached this Court invoking the extraordinary original jurisdiction under Article 226 of the Constitution of India, almost after nineteen years from the date of termination of his services. The learned counsel further pointed out that the petitioner was appointed purely on *adhoc* and *temporary* basis, in view of the fact that an estimated 10 million families come to India from the then East Pakistan and therefore, in those circumstances, Displaced Camps were designed in decentralizing 'village' groups including one at Devli in order to ensure proper sanitation and maintenance of the Camps and in order to avoid any major public health issues. The Humanitarian

Camp Planning Guidelines were developed and implemented for the first time. On account of continuous inflow of displaced persons and sheer size of displacement, many of the Camps were soon over crowded, which led to outbreak cholera and major flooding in the Camps during rainy season further worsened the situation. However, the process continued for years together for rehabilitation and on conclusion of the project, the services of the petitioner were no more required and therefore, the impugned order dated 28th of February, 1979 is perfectly legal and valid.

I have heard the learned counsel for the petitioner as well as learned counsel for the respondent-state and with their assistance perused the material available on record.

It is not in dispute that the appointment/engagement of the petitioner was made purely on *ad hoc* and *temporary* basis for a specific period i.e. upto 29th of February, 1972 or closure of the Camp, as is evident from the office order issued by the Commandant, East Pakistan Displaced Camps, Devli. The engagement was extended from time to time and on conclusion of the Project, the services of the petitioner were terminated on account of non-extension of the Project.

It is also not in dispute that the appointment of the petitioner was not made under any of the service rules. The appointment was purely on *ad hoc* and *temporary* basis on account of internal disturbance between East and West Pakistan, which ultimately led to formation of Bangladesh. It was on under those compelling and attending circumstances, the said Project was launched to establish Displaced Camps on humanitarian grounds.

The learned counsel for the state-respondents, Mr. Krishna Verma, pointed out that the petitioner had already been rehabilitated.

Moreover, the Project which necessitated appointment of the petitioner, purely on *ad hoc* and *temporary* basis; has since been closed, in such circumstances, the action of the respondents in terminating the services of the petitioner cannot be faulted by any stretch of imagination.

The learned counsel for the petitioner has not placed on record any document to substantiate the fact that Ranjeet Chandra has been continued in service. Be that as it may, when the Project itself was closed, continuance of Ranjeet Chandra is doubtful. However, in absence of any material available on record, the argument made cannot be sustained.

From a bare perusal of the appointment order it is evident that the appointment itself was for a fixed tenure/period and further, the nature of the tenure was purely temporary. The appointment was to come to an end after the expiry of the period stipulated therein i.e. 29th February 1972 or until the closer of the Camp for displaced persons. Thus, the tenure of the engagement was for a specified period. Further, the services of the petitioner have been terminated by order dated 28th of February 1979, with effect from 1st of April 1979, on account of rehabilitation of the displaced persons and closer of the camps by the Government of India, as no further extension to continue the operation of the camps was granted.

On a bare scrutiny of the appointment order, it is apparent on the face of record that the petitioner's appointment was for a fixed term for carrying out the work of a specified project in the attending facts and circumstances. The petitioner was engaged to work on the project and the contract of employment concluded on the completion of the project work. In the face of the fact that the petitioner's

appointment was purely *ad hoc* and *temporary* and a fixed term appointment. By no stretch of imagination, it could be said that the appointment of the petitioner was made while following the procedure as laid down under Articles 14 and 16 of the Constitution. It is by now well settled that a temporary or *ad hoc* employee cannot have a claim to become permanent without facing the selection or being absorbed in accordance with statutory rules but no discrimination can be made for same job on basis of method of recruitment. The controversy raised in the instant writ application is no longer *res integra* in view of the Constitution Bench verdict by the Honourable Supreme Court in in the case of *Secretary, State of Karnataka v. Umadevi* : (2006) 4 SCC 1, wherein their Lordships comprehensively dealt with the almost identical controversy, raised in this case. The Constitution Bench of the Honourable Supreme Court has observed thus:

“2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme.

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4. But, sometimes this process is not adhered to and the constitutional scheme of public employment is bypassed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without

reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. ...

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6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see *Basu's Shorter Constitution of India*). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and ⁶⁹⁴recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been

sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed."

In any view of the discussions herein above and pronouncement by the Constitution Bench of the Honourable Supreme Court on the similar nature of controversy raised herein, I see no justification for interference with the impugned order of termination.

The writ application fails and is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

In view of the final adjudication on the writ application, the stay application also stands closed.

(VEERENDR SINGH SIRADHANA), J.

Sunil/ P.A.

All corrections made in the judgment/ order have been incorporated in the judgment/ order being emailed.

(Sunil Solanki)
P.A.